

TO CREATE THE OFFICE OF CHIEF FINANCIAL OFFICER
OF THE GOVERNMENT OF THE VIRGIN ISLANDS

SEPTEMBER 7, 2004.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3589]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3589) to create the Office of Chief Financial Officer of the Government of the Virgin Islands, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. CHIEF FINANCIAL OFFICER OF THE VIRGIN ISLANDS.

(a) **APPOINTMENT OF CHIEF FINANCIAL OFFICER.—**

(1) **IN GENERAL.**—The Governor of the Virgin Islands shall appoint a Chief Financial Officer, with the advice and consent of the Legislature of the Virgin Islands, from the names on the list required under section 2(d). If the Governor has nominated a person for Chief Financial Officer but the Legislature of the Virgin Islands has not confirmed a nominee within 90 days after receiving the list pursuant to section 2(d), the Governor shall appoint from such list a Chief Financial Officer on an acting basis until the Legislature consents to a Chief Financial Officer.

(2) **ACTING CHIEF FINANCIAL OFFICER.**—If a Chief Financial Officer has not been appointed under paragraph (1) within 180 days after the date of the enactment of this Act, the Virgin Islands Chief Financial Officer Search Commission, by majority vote, shall appoint from the names on the list submitted under section 2(d), an Acting Chief Financial Officer to serve in that capacity until a Chief Financial Officer is appointed under the first sentence of paragraph (1). In either case, if the Acting Chief Financial Officer serves in an acting capacity for 180 consecutive days, without further action the Acting Chief Financial Officer shall become the Chief Financial Officer.

(b) **TRANSFER OF FUNCTIONS.—**

(1) **IN GENERAL.**—Upon the appointment of a Chief Financial Officer under subsection (a), the functions of the Director of the Office of Management and Budget established under the laws of the Virgin Islands shall be transferred to

the Chief Financial Officer. All employees of the Office of Management and Budget become employees of the Office of the Chief Financial Officer.

(2) DOCUMENTS PROVIDED.—The heads of each department of the Government of the Virgin Islands, in particular the head of the Department of Finance of the Virgin Islands and the head of the Internal Revenue Bureau of the Virgin Islands shall provide all documents and information under the jurisdiction of that head that the Chief Financial Officer considers required to carry out his or her functions to the Chief Financial Officer.

(c) DUTIES OF CHIEF FINANCIAL OFFICER.—The duties of the Chief Financial Officer shall include the following:

(1) Assume the functions and authority of the office of the Office of Management and Budget established under the laws of the Virgin Islands as transferred under subsection (b).

(2) Develop a report on the financial status of the Government of the Virgin Islands not later than 6 months after appointment and quarterly thereafter. Such reports shall be available to the public and shall be submitted to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

(3) Each year certify spending limits of the annual budget and whether or not the annual budget is balanced.

(4) Monitor operations of budget for compliance with spending limits, appropriations, and laws, and direct adjustments where necessary.

(5) Develop standards for financial management, including inventory and contracting, for the government of the Virgin Islands in general and for each agency in conjunction with the agency head.

(6) Oversee all aspects of the implementation of the financial management system provided pursuant to section 3 to ensure the coordination, transparency, and networking of all agencies' financial, personnel, and budget functions.

(7) Provide technical staff to the Governor and legislature of the Virgin Islands for development of a deficit reduction and financial recovery plan.

(d) DEPUTY CHIEF FINANCIAL OFFICER.—Until the date that is 5 years after the date of the enactment of this Act, the position of the Director of the Office of Management and Budget of the Virgin Islands shall—

(1) have the duties, salary (as specified in subsection (f)(3)), and other conditions of the Deputy Chief Financial Officer in lieu of the duties, salary, and other conditions of the Director of the Office of Management and Budget of the Virgin Islands as such functions existed before the appointment of the Chief Financial Officer; and

(2) assist the Chief Financial Officer in carrying out the duties of the Chief Financial Officer.

(e) CONDITIONS RELATED TO CHIEF FINANCIAL OFFICER.—

(1) TERM.—The Chief Financial Officer shall be appointed for a term of 5 years.

(2) REMOVAL.—The Chief Financial Officer shall not be removed except for cause. An Acting Chief Financial Officer may be removed for cause or by a Chief Financial Officer appointed with the advice and consent of the Legislature of the Virgin Islands.

(3) REPLACEMENT.—If the Chief Financial Officer is unable to continue acting in that capacity due to removal, illness, death, or otherwise, another Chief Financial Officer shall be selected in accordance with subsection (a).

(4) SALARY.—The Chief Financial Officer shall be paid at a salary to be determined by the Governor of the Virgin Islands, except such rate may not be less than the highest rate of pay for a cabinet officer of the Government of the Virgin Islands or a Chief Financial Officer serving in any government or semi-autonomous agency.

(f) CONDITIONS RELATED TO DEPUTY CHIEF FINANCIAL OFFICER.—

(1) TERM; REMOVAL.—The Deputy Chief Financial Officer shall serve at the pleasure of the Chief Financial Officer.

(2) REPLACEMENT.—If the Deputy Chief Financial Officer is unable to continue acting in that capacity due to removal, illness, death, or otherwise, another person shall be selected by the Governor of the Virgin Islands to serve as Deputy Chief Financial Officer.

(3) SALARY.—The Deputy Chief Financial Officer shall be paid at a salary to be determined by the Chief Financial Officer, except such rate may not be less than the rate of pay of the Director of the Office of Management and Budget.

(g) RESUMPTION OF FUNCTIONS.—On the date that is 5 years after the date of the enactment of this Act, the functions of the Chief Financial Officer shall be transferred to the Director of the Office of Management and Budget of the Virgin Islands.

(h) SUNSET.—This section shall cease to have effect after the date that is 5 years after the date of the enactment of this Act.

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the “Virgin Islands Chief Financial Officer Search Commission”.

(b) DUTY OF COMMISSION.—The Commission shall recommend to the Governor not less than 3 candidates for nomination as Chief Financial Officer of the Virgin Islands. Each candidate must have demonstrated ability in general management of, knowledge of, and extensive practical experience at the highest levels of financial management in governmental or business entities and must have experience in the development, implementation, and operation of financial management systems. Candidates shall not have served in a policy making or unclassified position of the Government of the Virgin Islands in the 10 years immediately preceding appointment as Chief Financial Officer.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members appointed not later than 30 days after the date of the enactment of this Act. Persons appointed as members must have recognized business, government, or financial expertise and experience and shall be appointed as follows:

(A) 1 individual appointed by the Governor of the Virgin Islands.

(B) 1 individual appointed by the President of the Legislature of the Virgin Islands.

(C) 1 individual, who is an employee of the Government of the Virgin Islands, appointed by the Central Labor Council of the Virgin Islands.

(D) 1 individual appointed by the Chamber of Commerce of St. Thomas-St. John.

(E) 1 individual appointed by the Chamber of Commerce of St. Croix.

(F) 1 individual appointed by the President of the University of the Virgin Islands.

(G) 1 individual appointed by the Chief Judge of the Virgin Islands Territorial Court.

(H) 1 individual, who is a resident of St. John, appointed by the At-Large Member of the Legislature of the Virgin Islands.

(I) 1 individual appointed by the Advocates for the Preservation of the Retirement System.

(2) TERMS.—

(A) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy shall be appointed for the remainder of that term.

(3) BASIC PAY.—Members shall serve without pay.

(4) QUORUM.—Five members of the Commission shall constitute a quorum.

(5) CHAIRPERSON.—The Chairperson of the Commission shall be the Chief Judge of the Territorial Court or her designee and shall serve as an ex officio member of the Commission and shall vote only in the case of a tie.

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson. The Commission shall meet for the first time not later than 15 days after all members have been appointed under this subsection.

(7) GOVERNMENT EMPLOYMENT.—Members may not be current government employees, except for the member appointed under paragraph (1)(C); and

(d) REPORT; RECOMMENDATIONS.—The Commission shall transmit a report to the Governor and the Resources Committee of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 60 days after its first meeting. The report shall name the Commission’s recommendations for candidates for nomination as Chief Financial Officer of the Virgin Islands.

(e) TERMINATION.—The Commission shall terminate 210 days after its first meeting.

SEC. 3. FINANCIAL MANAGEMENT SYSTEM.

It is hereby authorized to be appropriated such sums as necessary for the installation of a Financial Management System, including appropriate computer hardware and software, to the Government of the Virgin Islands. Upon becoming available, the financial management system shall be available to the Chief Financial Officer and, after the date that is 5 years after the date of the enactment of this Act, the Director of the Office of Management and Budget of the Virgin Islands, to assist the Chief Financial Officer or the Director of the Office of Management and Budget of the Virgin Islands, as the case may be, to carry out the official duties of that office.

SEC. 4. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) **CHIEF FINANCIAL OFFICER.**—In sections 1 and 2, the term “Chief Financial Officer” means a Chief Financial Officer or Acting Chief Financial Officer, as the case may be, appointed under section 1(a).

(2) **COMMISSION.**—The term “Commission” means the Virgin Islands Chief Financial Officer Search Commission established pursuant to section 2.

(3) **GOVERNOR.**—The term “Governor” means the Governor of the Virgin Islands.

(4) **REMOVAL FOR CAUSE.**—The term “removal for cause” means removal based upon misconduct, failure to meet job requirements, or any grounds that a reasonable person would find grounds for discharge.

SEC. 5. NO ABROGATION OF POWERS.

Nothing in this Act shall be construed to permit the Governor and Legislature of the Virgin Islands to dilute, delegate, or otherwise alter or weaken the powers and authority of the Office of Management and Budget established under the laws of the Virgin Islands.

PURPOSE OF THE BILL

The purpose of H.R. 3589 is to create the Office of Chief Financial Officer of the Government of the Virgin Islands.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3589 is intended to ensure that the growing deficit of the United States Virgin Islands (USVI) will be addressed. The bill establishes a framework for choosing a Chief Financial Officer (CFO) who would temporarily be in place to control spending by the territorial government.

Multiple factors in the past 15 years have led to a long period of economic instability in the USVI. These include the economic costs throughout the public and private sector of rebuilding after six hurricanes, as well as the gradual decline in the tourism industry. Further, the government workforce in the USVI is substantial and many services that are delivered more easily on the mainland are replicated on the Islands, a practice which has been mirrored in other U.S. insular areas.

Currently, the USVI carries approximately \$1 billion in debt. Over time, and under numerous administrations on both the federal and territorial levels, the budget deficits became new debt by the end of each year, with little action taken to recover the local economy.

In October 1999, Congress passed legislation amending the Revised Organic Act of the Virgin Islands authorizing the USVI to issue general obligation bonds for “any public purpose authorized by the Virgin Islands Legislature.” The enactment of the legislation, Public Law 106–84, allowed the USVI to issue \$300 million in bonds to fund working capital. Nearly half of the bond went towards paying past due income tax refunds and government vendors. The issuance of these bonds has only exacerbated the territory’s economic difficulties, and fundamental restructuring of debt that was to take place and bring about fiscal stability has not occurred.

In accordance with Public Law 106–84, the USVI Governor also entered into a Memorandum of Understanding (MOU) with then-Secretary of the Interior Bruce Babbitt, establishing mutually agreed financial accountability and performance standards for the fiscal operations of the USVI. Though the Government of the USVI was to implement a short-term recovery plan that included man-

dates for large reductions in local expenditures, this MOU has not resulted in economic recovery.

To address this problem, this legislation will establish a CFO to oversee all government expenditures and serve a temporary term of five years. The CFO would be authorized to disapprove spending inconsistent with budgets approved annually by the Virgin Islands Legislature. The practical applications stated in the legislation, according to some, contradict those powers delegated to the USVI under its Revised Organic Act, the law that provides for specific areas wherein self-governance is encouraged. The Committee intends the legislation to reflect the framework for fiscal restraint that was enforced in the District of Columbia in the late 1990s under the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Public Law 104–8).

The Committee notes that USVI Governor Turnbull does not support this legislation, a sentiment that has been echoed by other elected officials within the Virgin Islands Legislature. Specifically, the Governor wrote to Chairman Richard Pombo on July 13, 2004, to express his opposition to the Committee marking up H.R. 3589. Within this correspondence, he states that “H.R. 3589 would severely impair the authority of elected Territorial officials, and place excessive power in the hands of a single unelected person who would remain unaccountable to the people and their elected officials in the Virgin Islands for the full five-year tenure of his or her term of office.”

COMMITTEE ACTION

H.R. 3589 was introduced on November 21, 2003 by Congresswoman Donna M. Christensen (D–VI). The bill was referred to the Committee on Resources. On June 16, 2004, the Full Committee held a hearing on the bill. On July 14, 2004, the Full Resources Committee met to consider the bill. Mrs. Christensen offered an amendment in the nature of a substitute to remove the role of the Secretary of Interior in choosing and overseeing the CFO directly and allow for a local Commission to select the CFO while retaining the independence of this officer from the territorial government. It was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, section 3, of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in car-

rying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to create the Office of Chief Financial Officer of the Government of the Virgin Islands.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 2004.

Hon. RICHARD W. POMBO,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3589, a bill to create the Office of the Chief Financial Officer of the Government of the Virgin Islands.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Marjorie A. Miller (for the state and local impact).

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3589—A bill to create the Office of Chief Financial Officer of the Government of the Virgin Islands

H.R. 3589 would require the Governor of the Virgin Islands to appoint a Chief Financial Officer (CFO) to serve for a five-year period, with the advice and consent of the legislature of the Virgin Islands. The legislation would establish a Virgin Islands Chief Financial Officer Search Commission to recommend candidates for the CFO position. The current Director of Management and Budget of the Virgin Islands would become Deputy CFO and all functions would be transferred to the CFO. In addition, the bill would authorize the Department of the Interior (DOI) to provide a financial management system to the Government of the Virgin Islands. Five years after enactment, all functions of the CFO would be transferred to the Director of Management and Budget of the Virgin Islands.

Assuming the availability of appropriated funds, and based on information from DOI, CBO estimates that implementing this legislation would cost a total of \$5 million in 2005 and 2006 to install a financial management system for the Virgin Islands. Enactment of H.R. 3589 would not affect direct spending or revenues.

The bill contains no private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). H.R. 2400 contains an intergovernmental mandate as defined in UMRA, but CBO estimates that the cost of the mandate would be well below the threshold established in that act (\$60 million in 2004, adjusted annually for inflation.) By requiring the appointment of a Chief Financial Officer, this bill would preempt powers previously delegated to the local government of the Virgin Islands by the United States. Because the Chief Financial Officer would assume the duties and the staff of an existing agency—the Office of Management and Budget of the Virgin Islands—CBO estimates that the costs imposed by this mandate would be less than \$200,000 per year.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Marjorie A. Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates, as defined by Public Law 104-4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law. The bill does preempt powers previously granted to the Virgin Islands by the United States.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

